IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2840 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNABEN W/O BHARATBHAI DAHYABHAI @ DAYALBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2840 of 2003

MS BANNA DUTTA with MR CHETAN B RAVAL for Petitioner

MR PRADEEP D BHATE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 19/05/2003

ORAL JUDGEMENT

The petitioner-detenu, Smt.Harshaben Vipulbhai Patel, in this petition, has challenged the order of

detention dated 10.11.2002 passed by the Commissioner of Police, Surat City, i.e. respondent No.1 herein, under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (in short, 'PASA Act').

In the grounds of detention supplied to the petitioner along with the order of detention, the detaining authority has placed reliance on two cases registered against the petitioner by the Sachin Police Station vide C.R.Nos.383 and 518 of 2002 under Sections 66(1)B, 65-E, A, 81 and 116(2) of the Bombay Prohibition PASA Act. The first offence registered against the petitioner is on 1.8.2002 while the second one is registered on 1.10.2002. Besides the aforesaid two cases, the detaining authority has relied upon the incidents of 25.9.2002 and 19.7.2002 and the statements of the witnesses in respect of the said incidents, whose identity has not been disclosed claiming privilege under Section 9(2) of the PASA Act. Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and therefore, with a view to preventing her from acting in any manner prejudicial to the maintenance of public order, she is required to be detained and hence the impugned order of detention has been passed against her on 10.11.2002.

Learned Counsel appearing for the petitioner, though raised many contentions, it is not necessary for me to consider all the contentions since the petition is required to be disposed of only on the ground that there is a delay in passing the order of detention against the petitioner. Learned Counsel submits that the petitioner was arrested for the last offence on 1.10.2002 and the impugned order has been passed on 10.11.2002, i.e. after about 40-45 days after the petitioner was arrested. In the submission of learned Counsel, the unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. Learned Counsel has placed reliance on a decision rendered by the Apex Court in the case of Pradeep Nilkanth Paturkar v. S.Ramamurti and ors., reported in AIR 1994 SC 656 and a decision of this Court in the case of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad City and ors., reported in 1997 (1) G.L.H. 381. In both the cases, the order of detention was set aside on the ground of unexplained delay, whether short or long, especially when a specific plea of delay has been raised.

In the instant case, the respondents, though served, have not filed any reply. Naturally, therefore,

the delay is not explained. Under the circumstances, I am of the opinion that the unexplained delay makes a ground of detention not proximate, vitiating the order of detention.

In the result, the petition is allowed. The impugned order of detention dated 10.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.